

## **REMARKS**

Claims 1, 5 and 7 have been amended to address the Claim Objections, as suggested in the Office Action. Support for the claimed subject matter may be found throughout the Specification.

Claim 1 has been further amended to specify a group of viscosity-building emulsifiers; that the droplet measurement referrers to diameter. Support for this subject matter may be found throughout the Specification, and particularly at page 6, lines 30-34 of the Specification.

Claim 1 has been further amended to specify an oil droplet diameter size. Support for this subject matter may be found on page 8, lines 10-12 of the Specification.

Claim 13 has been amended as suggested in the Office Action.

Claim 10 has been amended to specify that a smooth emulsion with a unique oil droplet size distribution is produced. Support for this subject matter may be found throughout the Specification, and particularly at page 6, lines 30-34 of the Specification. Claim 10 has been further amended to incorporate the subject matter of claim 11, which has been canceled, without prejudice.

Claim 14 has been amended to incorporate the subject matter of claim 15, which has been canceled, without prejudice.

Care has been taken not to introduce any new matter.

***The Claims, As Amended, Comply with 35 USC § 112, second paragraph***

Claim 1 has been amended to specify a group of viscosity-building emulsifiers; that the droplet measurement refers to diameter. Support for this subject matter may be found throughout the Specification, and particularly at page 6, lines 30-34 of the Specification.

Regarding the terms “coarse” and “smooth” in claim 10 as relative terms rendering the claim indefinite, Applicants respectfully submit that the terms “coarse” and “smooth” are defined by the specification at page 4, lines 8-11. This provides a standard for ascertaining the requisite degree, and one of ordinary skill in the art is reasonably apprised of the scope of the invention.

Claim 13 has been amended as suggested in the Office Action.

Claims 8 and 15 have been canceled, without prejudice.

Reconsideration and withdrawal of the rejection is respectfully requested.

**35 USC § 102**

Claims 1, 3-11 and 13-15 were rejected under 35 U.S.C. 102(e) as being anticipated by Bialek (US 7,520,737, filed 10/24/03).

Bialek cannot anticipate to the present invention because both inventions, which are commonly owned, claim priority to the same filing date of 10/24/03. It follows that Bialek and is not prior art for purposes of 35 USC § 103, either.

Reconsideration and withdrawal of these rejections is respectfully requested.

### ***Claims Are Not Obvious under 35 USC § 103***

Claims 2 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bialek (US 7,510,737, filed 10/24/03) as the primary reference. Applicants respectfully traverse in light of the comments above as to the prior art status of Bialek.

Claims 1-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Farrer (WO 03/053149) in view of Han (US 6,516,797). According to the Office Action, regarding claims 1, 2 and 10-12, Farrer discloses producing an edible emulsion by mixing oil, water (p. 3, lines 7-14, p. 17, lines 5-10), a thickener (p. 12, lines 30-33), citrus fibers as a cold hydrating viscosity enhancer in an amount of 3-30% by weight of a powder or tablet, which is later added to a variable amount of oil and water (p. 15, lines 4-12), and a caseinate (p. 17, lines 11-15) as a protein based emulsifier. ; etc.; It is further disclosed to add the emulsifiers to a dairy base such as cream (p. 18, lines 11-18).; Regarding the quantity of citrus fiber added, it is disclosed that the amount of oil and water added to the powder is varied based to provide a spreadable final emulsion; therefore an amount of citrus fiber present in the final product is obviously adjustable based on the desired thickness of the final product, as the citrus fiber is being used to control the viscosity (p. 17, lines 5-10). ; An example using a different embodiment of the powder is disclosed in Example 1, wherein 45 g of water and 50 g of oil are added to 10 g of the powdered composition.; In such a case, the emulsion would contain 0.28% citrus fiber if it was present in the tablet in the amount of 3% by weight.

According to the Office Action, the product recovered in Farrer is a spreadable final emulsion that is coarse since it has not been homogenized. Furthermore, the Office Action acknowledges that Farrer fails to disclose the size of the oil droplets present in the emulsion.

However, according to the Office Action, Han discloses subjecting emulsified spreadable dairy products to a two stage homogenizing process (column 10, lines 23-57), by shearing at 50C (column 10, lines 15-22), and pressures of preferably 300 psi (20.5 bar) to 10,000 psi (689 bar) wherein the average particle size of fat droplets is reduced to 0.2-3 microns.; It would have been obvious to one having ordinary skill in the art at the time of the invention to subject the emulsion of Farrer to the homogenization process disclosed by Han, because homogenization stabilizes the emulsion and allows it to remain in an emulsified state (Han, column 10, 25-30).; Additionally, Farrer recognizes the benefit of controlling the oil droplet size, as products with smaller average oil droplet sizes are stable upon storage and show reduced sweating (p. 14, lines 18-21).

The Office Action further acknowledges that the percentage of particles having a specific particles size is not given.

However, according to the Office Action, it would be obvious to one having ordinary skill in the art that at least 80% of all fat droplets will have a size less than 10 microns in the average size is reduced to 0.2-3 microns by homogenization (Han, column 10, lines 58-65).

Further according to the Office Action, regarding claim 3, using the ratio of powdered composition to oil and water disclosed in Example 1, about 47.5% by weight of oil is present in the final emulsion.; Regarding claims 4 and 5, it is disclosed to use citrus fibers but the specific citrus fiber used is not disclosed.; However, one having ordinary skill in the food science art would find it obvious to use lemon, lime, orange or grapefruit fiber given the disclosure of citrus fibers by Farrer.; Regarding claims 6 and 7, the powdered composition disclosed according to claim 1 comprises from 6-60% of emulsifiers as a mixture of (3-30%) lecithin and (3-30%) caseinate. Using the ratio of

powder to oil and water disclosed in example 1, the emulsion formed will have 0.57-5.7% of emulsifiers, and 0.285-2.85% viscosity building emulsifier (caseinate).; Regarding claim 9, Farrer discloses using gums as a thickener (p. 12, lines 30-33).; Regarding claim 13, the food product produced is a spread (p. 1, background of the invention).; etc.

The Office Action acknowledges that Farrer is silent regarding the viscosity of the food product produced.

However, according to the Office Action, Farrer discloses that the product has a spreadable texture.; the product will intrinsically have a viscosity between 500-10,000 centipoise; etc.

Applicants respectfully traverse.

The claims, as amended, provide a unique emulsion having a unique oil particle size distribution and viscosity that are not disclosed or suggested by the combination of Farrer and Han. Farrer makes a dry product and Han makes a cream cheese substitute that is even harder than regular cream cheese. Farrer teaches away from the present invention by providing a dry composition that can be formed into an emulsion by manual operation within a short time. See p. 3, lines 1-14. Certainly, Farrer leads away from the method of claim 10, where a homogenization step is applied for producing a smooth emulsion. Han are silent regarding an edible emulsion comprising oil, water, a viscosity-building emulsifier, insoluble fruit fibers and thickener such as the edible emulsion according to the present invention. The combination of the dry product of Farrer and the cream cheese of Han do not lead to the composition, product, or method of the present invention. Accordingly, the combination of the references would not lead one skilled in the art to the unique emulsion and method of the present invention.

### **CONCLUSION**

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks.

It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,  
/Ellen Plotkin/

---

Ellen Plotkin  
Attorney for Applicant(s)  
Reg. No. 36,636

(201) 894-2253